IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 11TH DECEMBER 2006 / 20TH AGRAHAYANA 1928

CRL.A.No. 1317 of 2005(C)

SC.329/2000 of ADDL.SESSIONS COURT,-I, MAVELIKKARA
CP.23/1998 of JUDL.MAGISTRATE OF FIRST CLASS, KAYAMKULAM

APPELLANT:

GANGADHARAN, S/O.UMMINI,
C.7613, C.P. TRIVANDRUM-695 012.

BY ADV. ADV.GEORGE SEBASTIAN (STATEBRIEF)

RESPONDENTS:

STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. C.M. NAZAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 11/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

Crl.A.No.1317 OF 2005

Dated this the 11th day of December, 2006.

JUDGMENT

The appellant faced trial for the offences punishable under Sections 55 (a) and 8(1) read with 8(2) of the Abkari Act. The allegation against the appellant is that he was found in possession of 750 ml of arrack at about 5.45 p.m on 6.6.1997. To prove the case against the appellant the prosecution relied on the evidences of Pws 1 to 6 and produced Exts.P1 to P10. Mos 1 and 1(a) were also produced. After closing the prosecution evidence, the appellant was questioned under Section 313 of the Cr.P.C. He denied the allegation levelled against him. Further, he had stated that he was arrested by the police and the case is foisted against him. However relying on the evidence adduced by the prosecution, the trial court found the appellant guilty of the offence punishable under Section 8(1) read with Section 8(2) of the Abkari Act. He was convicted thereunder and sentenced to undergo R.I for one year and also to pay a fine of Rs. One lakh. In default of payment of the fine, it was

ordered S.I for a further period of six months more. The above conviction and sentence passed against the appellant are assailed in the appeal.

2. The appeal is filed through the jail authorities and since the appellant is not defended by a counsel of his own choice, a counsel from the State brief panel has been appointed to argue the case of the appellant. The counsel appearing for the appellant submits that the prosecution had not proved the case against the appellant beyond reasonable doubt as the evidence adduced by the prosecution is that of the official witness alone and there is no independent evidence to support the prosecution case at all. Further the counsel submits that the sentence awarded against the appellant is excessive. The prosecution relied on the evidence of PW1, the Preventive Officer. Though the prosecution examined Pws 2 and 3, the two independent witnesses to prove that MO1 bottle with 750 ml of arrack was kept in the house of the appellant, they were turned hostile to the prosecution. They have admitted their signatures in Ext.P2 search list and also Ext.P1 mahazar. PW1 had stated before the court that while himself and other

excise officials were on patrol duty they got information that the appellant was distilling illicit arrack in the house, he along with the party went to the house and on search it is found that MO1 bottle with 750 ml liquor kept in the lanto portion of the house which was used as kitchen. Further, PW1 had stated that he had prepared Ext.P2 search memo and on searching the house MO1 bottle was found from the house of the appellant. His evidence was supported by Pws 4 and 5 who have given evidence in terms of the evidence of PW1. From the evidence adduced by the prosecution, the trial court had come to the conclusion that the appellant was arrested and MO1 bottle was taken from his house on search made by PW1. The evidence given by Pws 4 to 6 was also relied on by the trial court to find that MO1 and the sample were reached to the court in time. It is also found by the trial court that the house from which MO1 was seized belongs to the appellant. Hence, the trial court correctly came to the conclusion that the prosecution succeeded in proving the case against appellant.

3. On an over all appreciation of the evidence adduced

by the prosecution, this Court is of the view that the trial court is fully justified in finding the appellant guilty of the offences charged against him. So, the findings entered by the trial court require no interference by this Court. With regard to the sentence awarded against the appellant, the trial court also had found the petitioner committed more than one abkari offences. Considering the nature and gravity of the offence, the sentence of imprisonment for one year and fine of Rs.One lakh is justifiable. Hence, this Court is also of the view that the sentence awarded against the petitioner requires no interference.

Accordingly, the appeal stands dismissed. It is revealed that the appellant is committed to prison from the date of the judgment of the trial court, namely, from 14th October, 2004 and the period of sentence is over. So, the appellant/accused in S.C.No.329/2000 on the file of the Additional Sessions Judge-I, Mavelikara, shall be released forthwith, if he is not required to be kept in jail in connection

with any other case and if he is not already released.

K.THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.1317 OF 2005

JUDGMENT

11th December, 2006.